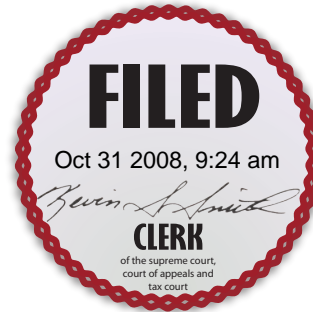


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: K.M.,
CHILD IN NEED OF SERVICES.

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)

No. 49A02-0803-JV-267

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0708-JC-35669

MEMORANDUM DECISION – NOT FOR PUBLICATION

October, 31, 2008

BAKER, Chief Judge

Appellant-respondent father (Father) appeals the order entered by the juvenile court declaring Father's son, K.M., to be a Child In Need of Services (CHINS). Father essentially argues that there is insufficient evidence supporting the juvenile court's conclusion that K.M. is a CHINS. Finding no error, we affirm.

FACTS

K.M. was born to Father and Mother on February 27, 1999. During the relevant period of time, K.M. was living with Mother, who was his sole legal custodian, and Father was incarcerated. He was sentenced in 2004 to an eight-year executed term for class B felony possession of a handgun by a serious violent felon and class A misdemeanor driving with a suspended license. Ex. 4. Father's expected release date is in 2009. Appellant's App. p. 7.

On August 12, 2007, Marion County Department of Child Services (DCS) received a report alleging that eight-year-old K.M. had been the victim of abuse or neglect. Specifically, the report stated that Mother had been arrested following a domestic dispute with her husband, Anthony, and K.M. had thrown a knife at the arresting officer. A DCS caseworker investigated the allegation and determined that Mother had failed to protect K.M. from being physically abused by Anthony and from witnessing domestic violence between Mother and Anthony. Appellant's App. p. 60.

On August 27, 2007, DCS filed a petition alleging K.M. to be a CHINS, and on September 11, 2007, it filed an amended petition because it had inadvertently omitted certain allegations from its original petition. The amended petition alleged that

[d]uring an altercation between [Mother] and her husband, [Anthony] picked [K.M.] up by the neck and pressed him against the wall. He also hit [K.M.] in the knee with his fist. The police were called to the residence because of the altercation, and [Mother] was arrested on an outstanding warrant. . . . At this time, [K.M.] is endangered in the care of his mother and the family is in need of services.

. . . [Father] has not come forward to successfully demonstrate to [DCS] the ability or willingness to appropriately parent his child. [Father] is currently incarcerated and unable to care for his child.

Appellant's App. p. 60-61.

Both parents were represented by counsel in the CHINS proceedings. On November 15, 2007, Mother and DCS submitted an agreed entry admitting the allegations in the CHINS petition. Mother also agreed to take part in dispositional services. K.M. was returned to Mother's care in November 2007 and has lived with her since that time.¹ At some point, she filed a petition to dissolve her marriage with Anthony and they no longer live together.

At the November 15 hearing, Father's attorney indicated that he "anticipate[d] an agreed entry [as to Father], but requests this matter be set for a fact finding hearing, for procedure." *Id.* at 82. Therefore, on January 29, 2008, the juvenile court conducted a factfinding hearing regarding K.M.'s status as to Father. At that hearing, Father's attorney argued that "due to Mother's previous admission to the petition and the fact that the child is now being properly cared for by Mother, that there is no need to find [sic]

¹ There is a discrepancy in the record, inasmuch as the juvenile court's entries imply that K.M. was removed from the home. But the DCS caseworker who testified at the CHINS hearing stated that K.M. had been living with Mother since November 2007, tr. p. 21-22, and DCS's brief repeats that assertion, appellee's br. p. 3, which we will accept as true.

adjudication as to Father.” Id. at 88. The court acknowledged that K.M. was doing well but otherwise denied Father’s request: “The child is currently placed with Mother and doing well. DCS anticipates closure within the next 60 days. Court finds the child to be a [CHINS] as to [Father].” Id. at 89. Father now appeals.

DISCUSSION AND DECISION

Father argues that the juvenile court erroneously found K.M. to be a CHINS. As we consider this argument, we observe that when we review a juvenile court’s CHINS determination, we consider only the evidence most favorable to the judgment and the reasonable inferences that may be drawn therefrom. We will not reweigh the evidence or assess witness credibility. Perrine v. Marion County Office of Child Servs., 866 N.E.2d 269, 273 (Ind. Ct. App. 2007). When a trial court enters findings of fact and conclusions thereon, “albeit very general findings in this case,” we must determine whether the evidence supports the findings and whether the findings support the judgment. In re C.B., 865 N.E.2d 1068, 1073 (Ind. Ct. App. 2007), trans. denied. We will reverse the trial court’s judgment only if it is clearly erroneous. Id.

Indiana Code section 31-34-1-1 provides that a child under the age of eighteen is a CHINS if:

- (1) the child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and
- (2) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

DCS had the burden of proving that K.M. was a CHINS by a preponderance of the evidence. I.C. § 31-34-12-3.

Father spends a great deal of time arguing that “[t]here may be a CHINS finding on one parent and not the other[.]” Appellant’s Br. p. 12.² In essence, however, the gravamen of Father’s argument on appeal is that there is insufficient evidence supporting the juvenile court’s determination that K.M. is a CHINS. Father makes no argument as to himself—and, indeed, inasmuch as it is undisputed that he will continue to be incarcerated until some point in 2009, he could not make a credible argument that he is able to care for K.M. at the current time.

Instead, Father focuses on Mother, arguing that the juvenile court erroneously failed to consider the changed circumstances at the time of the factfinding hearing. Specifically, Father emphasizes that at the time of the hearing, Mother was fulfilling her dispositional obligations, K.M. was doing well in her care, and DCS anticipated that the case would be closed within sixty days. Appellant’s App. p. 89. Thus, he insists that the juvenile court should have reevaluated its conclusion that K.M. was a CHINS at that time, notwithstanding the fact that Mother had admitted to the allegations in the CHINS petition just two months earlier.

At the hearing, however, the sole testimony on the matter of Mother’s progress came from the family’s DCS caseworker, who testified that although K.M. was doing

² Father made precisely the opposite argument to the juvenile court: “So my interpretation of the statute is not that there’s a separate finding as to mom and dad, but there’s one finding as to the child.” Tr. p. 2.

well and Mother was fulfilling her responsibilities according to the dispositional decree, Mother and K.M. were still participating in required services. Specifically, Mother was still participating in home-based counseling and K.M. had just had his first counseling appointment the week of the hearing. Tr. p. 20. The caseworker testified that DCS anticipated that the case would be closed within sixty days. Implicit in that testimony, however, is a conclusion that at the time of the hearing, sufficient progress had not been made to conclude that K.M. was no longer a CHINS. Given the agreed entry pursuant to which Mother admitted that K.M. was a CHINS, the caseworker's testimony at the factfinding hearing that services were ongoing and the case was not yet ready to be closed, and the fact that Father was incarcerated at the time of the hearing, we find that the juvenile court properly reaffirmed K.M.'s status as a CHINS at that time.

The judgment of the juvenile court is affirmed.

MATHIAS, J., and BROWN, J., concur.